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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

~~MISCELLANEOUS DOCKET No. 300~~

No. 31

UNITED STATES OF AMERICA ex rel JAMES SMITH,
Petitioner,

v.

DR. FREDERICK S. BALDI, Superintendent,
Philadelphia County Prison

BRIEF OF THE DISTRICT ATTORNEY FOR THE CITY AND COUNTY OF PHILADELPHIA

RICHARDSON DILWORTH,
District Attorney.

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OPINIONS BELOW.

The opinions of the Court of Appeals are reported at 192 F. 2d 540 and 192 F. 2d 549. The opinion of the District Court is reported at 96 F. Supp. 100.

JURISDICTION.

The judgment of the Court of Appeals was entered on October 26, 1951. The petition for a writ of certiorari was filed January 15, 1952, and was granted March 24, 1952. The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED.

(1) Whether on the facts alleged in the petition for a writ of *habeas corpus* in the District Court, petitioner was overreached and denied due process of law.

(2) Whether the District Court erred in not determining these facts.

STATEMENT.

The facts involved in this case are sufficiently stated in the two opinions of the court below (192 F. 2d 540 and 192 F. 2d 549) and need not be repeated here.

ARGUMENT.

I.

The District Attorney for the City and County of Philadelphia Has Standing to Present Arguments in this Case to this Honorable Court.

The District Attorney for the County of Philadelphia is the duly elected law enforcement officer of that subdivision of the Commonwealth of Pennsylvania. The trial of the present case took place in Philadelphia County and was prosecuted solely by its District Attorney. District Attorney John H. Maurer's appearance or that of one of his Assistant's was entered on behalf of the Commonwealth at every stage of the proceedings up to and including those in the court below. Likewise, District Attorney Maurer's name or that of one of his Assistant's appears on all of the papers for the Commonwealth in every stage of the proceedings. The Attorney General of Pennsylvania has not superseded the District Attorney of Philadelphia in this case.

II.

The District Court Committed Error by Not Receiving Evidence and Determining the Facts Necessary for a Proper Application of the Constitutional Law Involved.

It is submitted that the reasoning and statements of applicable law contained in the dissenting opinion of Chief Judge Biggs, joined in by Circuit Judges McLaughlin and Staley (192 F. 2d 540, 549-569), are valid and sound and should have governed the disposition in the court below of the issues now raised before this Court. It is the opinion of the present District Attorney of Philadelphia that if the allegations of the appellant, as contained in his petition for a writ of *habeas corpus*, are true, he has been overreached and denied due process of law.

It is clear from the record, that the issues of fact raised by the petition for a writ of *habeas corpus* have not been determined either by the Supreme Court of Pennsylvania or by the United States District Court. Since, substantial issues of Federal constitutional law are raised, it was incumbent on the District Court to determine the facts.

CONCLUSION.

It is, therefore, respectfully submitted that for the reasons contained in the dissenting opinion of Chief Judge Biggs the judgment should be reversed and the cause remanded with instructions to the District Court to make findings of fact necessary for the proper determination of the Federal questions involved.

Respectfully submitted,

RICHARDSON DILWORTH,
District Attorney.